

17. (Twice Amended) A method of constructing an assay assembly, comprising:

providing a storage well including a base and side walls; and

inserting a chip on which an array of reactive species is immobilized into the storage well, the chip resting on the base of the storage well, the chip being retained in the storage well by retaining means.

REMARKS

Claims 1-3, 5-13 and 15-19 are pending. By this Amendment, claim 4 is cancelled, and claims 1 and 17 are amended. In view of the foregoing amendments and following remarks, reconsideration and allowance are respectfully requested.

The attached Appendix includes marked-up copies of each rewritten claim (37 C.F.R. §1.121(c)(1)(ii)).

Entry of the amendments is proper under 37 CFR §1.116 since the amendments: (a) place the application in condition for allowance for the reasons discussed herein; (b) do not raise any new issue requiring further search and/or consideration since the amendments amplify issues previously discussed throughout prosecution; (c) satisfy a requirement of form asserted in the previous Office Action; (d) do not present any additional claims without canceling a corresponding number of finally rejected claims; and (e) place the application in better form for appeal, should an appeal be necessary. The amendments are necessary and were not earlier presented because they are made in response to arguments raised in the final rejection. Entry of the amendments is thus respectfully requested.

Applicants appreciate the courtesies extended to Applicants' representative by Examiner Cross in the April 2, 2003, telephonic interview. The points discussed are incorporated into the following remarks.

I. The Claims Define Allowable Subject Matter

The Office Action rejects claims 1, 3, 4, 6 and 9-12 under 35 U.S.C. §102(b) as unpatentable over European Patent No. 569753 to Westhall (hereinafter "Westhall"); and rejects claims 2, 5, 7, 8, 13 and 15-19 under 35 U.S.C. §103(a) as unpatentable over Westhall in view of Great Britain publication 2,147,698 to Albon et al. (hereinafter "Albon"). These rejections are respectfully traversed.

Westhall does not disclose, teach or suggest an assay assembly, comprising, inter alia, a chip, and a storage well having a continuous base and side walls, the chip being located in the storage well and resting on the base of said storage well, the chip being retained in the storage well by retaining means, as claimed in independent claim 1.

The Office Action asserts that Westhall, in Fig. 1, discloses that spacer elements 4 retain the discs 3 in the tubular receiving element 2. Thus, the Office Action implies that spacers 4 in Westhall correspond to the retaining means claimed in independent claim 1. Applicants respectfully disagree with the Office Action's interpretation of the device in Westhall.

As discussed with, and agreed to by Examiner Cross in the April 2, 2003, telephone interview, spacers 4 disclosed in Westhall cannot retain the discs 3 in the tubular receiving element 2. For example, if the tubular receiving element 2 was turned upside down, the chips (discs 3) would simply fall out of the tubular receiving element 2. The spacers 4 in Westhall have no retaining effect.

This is different than the claimed invention where the chip is retained in the storage well by retaining means, as claimed in independent claim 1.

For at least these reasons, it is respectfully submitted that claim 1 is distinguishable over Westhall. Claims 3, 6 and 9-12, which depend from claim 1, are likewise distinguishable over the applied art for at least the reasons discussed as well as for the

additional features they recite. Withdrawal of the rejection under 35 U.S.C. §102(b) is respectfully requested.

Regarding the claim rejections under §103(a), Applicants submit that Westhall and Albon combination does not teach or suggest a method of constructing an assay assembly, comprising, inter alia, providing a storage well, and inserting a chip into the storage well, the chip resting on the base of the storage well, the chip being retained in the storage well by retaining means.

Applicants respectfully submit that Albon does not cure the deficiencies of Westhall. Further, Albon provides no motivation to modify its structure to achieve the claimed invention.

As required by MPEP Section 706.02(j), to establish a prima facie case of obviousness, these basic criteria must be met:

- 1) There must be some suggestion or motivation in the references themselves or in the knowledge generally available;
- 2) Reasonable expectation of success;
- 3) The prior art reference must teach or suggest all claim limitations.

The first and third requirements have not been met by the rejections of the Office Action. Albon does show any motivation to modify its structure to achieve the claimed invention, and the Office Action clearly admits that there is an essential part of the claimed invention missing in Westhall.

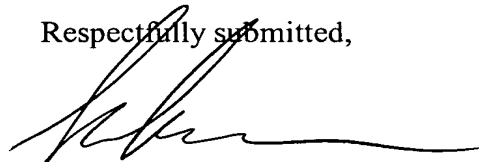
For at least these reasons, it is respectfully submitted that claims 2, 5, 7, 8, 13 and 15-19 are distinguishable over the applied art. Withdrawal of the rejection under §103(a) is respectfully requested.

II. Conclusion

For at least the reasons set forth above, Applicants respectfully submit that the claims define patentable subject matter. Favorable consideration and prompt allowance are respectfully solicited.

Should the Examiner believe that anything further is desirable in order to place the application in even better condition for allowance, the Examiner is invited to contact the Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,



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JAO:GPS/hs

Attachment:
Appendix

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<p>DEPOSIT ACCOUNT USE AUTHORIZATION Please grant any extension necessary for entry; Charge any fee due to our Deposit Account No. 15-0461</p>
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APPENDIX

Changes to Claims:

The following is a marked-up version of the amended claims:

1. (Twice Amended) An assay assembly, comprising:

 a chip on which an array of reactive species is immobilized; and

 a storage well having a continuous base and side walls;

 wherein said chip is located in said storage well and rests on said base of said
storage well, said chip being retained in said storage well by retaining means.

17. (Twice Amended) A method of constructing an assay assembly,
comprising:

 providing a storage well including a base and side walls; and

 inserting a chip on which an array of reactive species is immobilized into the
storage well, the chip resting on the base of the storage well, the chip being retained in the
storage well by retaining means.